IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

I.A NO. _______ OF 2017

IN

CIVIL APPEAL NO. 10866 -10867 OF 2010

IN THE MATTER OF:

Mohammad Siddiq@ Hafiz Mohammad Siddiq Etc. etc ... Appellants

Versus

Mahant Suresh Dase & Ors. Etc Etc . ... Respondents

AND IN THE MATTER OF:

1. Shyam Benegal, ... Applicant No. 1
2. Aparna Sen, ... Applicant No.2
3. Anil Dharker, ... Applicant No.3
4. Teesta Setalvad ... Applicant No. 4
5. Om Thanvi, ... Applicant No.5
6. Cyrus J. Guzder ... Applicant No.6
7. Aruna Roy, ... Applicant No.7
8. Ganesh N. Devy ... Applicant No.8
9. Dr. B.T. Lalitha Naik ... Applicant No.9
10. Medha Patkar ... Applicant No.10
11. Kumar Ketkar, ... Applicant No.11
12. Anand Patwardhan ... Applicant No.12

13.	Jayati Ghosh, economist,	Applicant No.13
14.	Kalpana Kannabiran	Applicant No.14
15.	Prof. G. Haragopal	Applicant No 15
16.	N. Babaiah	Applicant No.16
17.	R.B Sreekumar,	Applicant No.17
18.	Kiran Nagarkar,	Applicant No 18
19.	MK Raina	Applicant No.19
20.	Sohail Hasmi	Applicant No.20
21.	Ram Rahman	Applicant No.21
22.	Sumon Mukhopadhyaya	Applicant No.22
23.	Joy Sengupta,	Applicant No 23
24.	John Dayal	Applicant No.24
25.	Dolphy Anthony D'souza	Applicant No.25
26.	K L Ashok	Applicant No.26
27.	K.P. Sripala	Applicant No.27
28.	A.K. Subbaiah	Applicant No.28
29.	Suresh Bhat Bakrabail	Applicant No.29
30.	Tanaz Dara Mody (Rupa Mody)	Applicant No 30
31.	Muniza R. Khan	Applicant No.31

32. Tanveer Jafri

Applicant No.32

APPLICATION ON BEHALF OF THE APPLICANTS SEEKING INTERVENTION IN THE PRESENT CIVIL APPEAL UNDER ORDER LV READ WITH ORDER V (2) (3) OF THE SUPREME COURT RULES, 2013

TO,

THE HON'BLE CHIEF JUSTICE OF INDIA AND HIS COMPANION JUDGES OF THE HON'BLE SUPREME COURT OF INDIA

HUMBLE APPLICATION OF THE APPLICANTS ABOVE NAMED

MOST RESPECTFULLY SHOWETH:-

1. That the aforesaid matter is pending before this Honble Court and the applicants seek to intervene in the same. The present application is being filed by the applicants seeking leave of this Hon'ble Court to intervene in this present Civil Appeal arising out of judgement/ order dated 30.09.2010 passed by the Special Full Bench of the Hon'ble High Court of Allahabad at Lucknow whereby the Hon'ble High Court has decreed that the area covered by the central dome of the three domed structures, that is, the disputed structure being the deity of Bhagwan Ram Janamsthan and place of birth of Lord Rama as per the faith and belief of the Hindus belong to the Respondents in the present Civil Appeal. It is also declared that the area within the inner courtyard was used by both the Hindus and the Muslims and thus should be divided between the two communities. Further, it is also declared that the structures in the outer courtyard belong to the Nirmohi Akhara and the open space within the said outer courtyard be divided between Nirmohi Akhara and Respondents in the present Civil Appeal, provided that the

Muslims community will get a total area not less than 1/3rd of the total disputed premise.

2. The applicants are public spirited citizens from various walks of life and across the length and breadth of India who feel it is critical as a commitment to the foundational value contained in this constitution, to intervene and inject an urgency and a sane voice in this dispute. Apart from the parties of this dispute, there are vast majority of Indians, voiceless and unheard who have been mute victims to the festering sores and violence caused by his dispute.

3. The brief description of the Applicants herein are as under:

a. The applicant no.1, Shyam Benegal is a renowned and acclaimed film maker with a career spanning over 43 years and his films have historically centred on pressing public issues. His impactful body of work ranging from *Ankur* in 1974 to *Well Done Abba* in 2010 speaks for itself. His films, apart from being internationally acclaimed, have catalogued social issues tracing Indian society's march to modernity. He was recently appointed head of a Government Committee, which recommended in its report that the CBFC should limit its functioning to issuing certificates to movies and not impose censorship.

b. The applicant no.2 Aparna Sen is a renowned Indian Film maker, screen writer and actress and is well known for her award winning work in Indian cinema, especially in Bengal. She is the winner of three national film awards, nine international film festival awards for her direction in films. Her role in cinema has often reflected her concerns for pressing social issues. For these roles, she has been awarded the Padma Shri, the fourth highest civilian

award by the Government of India in 1987. She has been committed to the values of tolerance and civility in public discourse and remains a strong voice for the downtrodden.

c. The applicant no.3, Anil Dharker is a columnist and writer. He is a Founding Director and President of Citizens for Justice and Peace which was formed in the aftermath of the Gujarat riots, and is also the Founding Director of Mumbai Literary Festival. During his tenure at the National Film Development Corporation (then the Film Finance Corporation), which he eventually headed, many film-makers who are now household names, (like Govind Nihalani, Saeed Mirza, Aparna Sen, Ketan Mehta, Vidhu Vinod Chopra, Gautam Goutam Ghose) made their debut.

d. The applicant no.4, Teesta Setalvad is a writer, an award winning journalist, an educationist, a Human Rights Activist and the Secretary Citizens for Justice and Peace(CJP). A journalist since 1983, she was a reporter with *The Daily*&*The Indian Express*, a senior correspondent with *The Business India* and August, 1993 onwards, she dawned the role of the editor of *Communalism Combat*, Bombay. She has reported and analysed issued of communalization of the Indian Police Force, Institutionalised Bias in School text-books and Caste and Gender Bias, through intrepid investigative journalism in *Communlaism Combat* as also in mainstream Indian newspapers.

e. The applicant no.5, Om Thanvi, is a senior writer, a journalist, an author of several books and is the former Editor of Jansatta, a National Daily belonging to the Indian Express Group. UP. He has, been a recipient of the Ganesh Shankar Vidyarthi Puraskar for Journalism awarded by the President of India, of Shamsher Samman for Prose, Haldi Ghati Award for journalism,

SAARC Literary Award and Hindi Academy award. He was recently awarded 'Bihari Samman' by the K.K. Birla Foundation for his book Muanjodaro.

f. The applicant no.6, Cyrus J. Guzder is the Chairperson and Managing Director of AFL Private Limited, formerly known as Airfreight Pvt. Ltd., a pioneer in express delivery, supply chain management, freight forwarding and logistics business in India. He is also a founding member of Citizens for Justice and Peace (CJP) and continues to serve on its Board.

g. The applicant no.7 Aruna Roy is a former IAS officer, Indian political and social activist, and co-founder of Mazdoor Kisan Shakti Sanghatan (MKSS). She is the recipient of the Magsaysay Award in 2000 and the Lal Bahadur Shastri National Award for Excellence in Public Administration, Academia and Management in 2010. Aruna Roy was one of pioneers of the Right to Information movement in India through the MKSS and the National Campaign for the People's Right to Information (NCPRI), which significantly paved way for the Right to Information Act in 2005. She served on the National Advisory Council till 2006 when she resigned.

h. The applicant no.8, Ganesh N. Devy is a former professor of English Literature at the Maharaja Sayajirao University of Baroda, a renowned literary critic, an activist and the founder director of the Bhasha Research and Publication Center, Vadodara and *Adivasi Academy* at Tejgadh, Gujarat established to create a unique educational environment for the study of tribal communities. He led the People's Linguistic Survey of India in 2010, which through thorough research, documented 780 Living Indian Languages.

i. The applicant no.9, Dr. B.T. Lalitha Naik is a social activist and a writer. She is also a former minister of Department of Women and Children Welfare, Karnataka.

j. The applicant no.10, Medha Patkar is an Indian social activist working on crucial political and economic issues concerning adivasis, Dalits, farmers, labourers and women who inadvertantly continue to remain as the presecuted sections of our society. Patkar is the founder member of the 32 years old People's Movement called Narmada Bachao Andolan (NBA) in three states: Madhya Pradesh, Maharashtra and Gujarat. Narmada Bachao Andolan (NBA) has been engaged in a long drawn struggle for justice and rehabilitation of the people affected by the dam projects related to the Sardar Sarovar Dams. She is also one of the founders of the National Alliance of People's Movements (NAPM).

k. The applicant no.11, Kumar Ketkar is a journalist with a career spanning over 40 years with renowned newspaper groups like The Times of India (Chief Editor, Maharashtra Times), Indian Express (Chief Editor, Loksatta). He has been the recipient of the Padmashree in the year 2001, C.D. Deshmukh Award for Excellence in Economic/financial writing, Giants International Award for international coverage, the Rajiv Gandhi Award for Excellence in Media, the Doordarshan Award, Ratnadarpan for Journalistic Excellence, Maharashtra Bhushan in Journalism by Government of Maharashtra amongst others

l. The applicant no.12 Anand Patwardhan is a renowned documentary filmmaker. His political documentaries, a testament to over four decades of his relentless activism bring into focus issues pertaining to religious fundamentalism and sectarianism.

m. The Applicant no.13, Jayati Ghosh is a development economist and a professor of Economics at the Centre for Economic Studies and Planning, School of Social Sciences, at the Jawaharlal Nehru University, New Delhi. Her keen areas of practice range from globalisation, international finance, employment patters in development countries, macro economic policy and issues related to gender and development. She was the principal author of the West Bengal Human Development Report which has received the UNDP Prize for excellence in analysis. In addition to her many scholarly articles, she regularly pens columns on economics and current affairs for Frontline, Businessline, the Bengali newspaper Ganashakti, Deccan Chronicle and Asian Age. She was conferred with the International Labour Organisation's Decent Work Research Prize along with Professor Eve Landau in February, 2011.

n. The applicant no.14, Kalpana Kannabiran is an Indian sociologist and lawyer. She is at present the Director of Council for Social Development, Hyderabad. She is Professor of Sociology and Regional Director, Council for Social Development, Hyderabad, an autonomous research institute supported by the Indian Council for Social Science Research, a position she has held since March 2011.

o. The applicant no.15, Prof. G. Haragopal is a senior academician, educationist and a Human Rights activist. He is a visiting professor at NLSIU, Bangalore where he teaches Political Economy of India and Public Administration for Masters of Public Policy Programme. His academic contribution in the area of poverty and development studies is placed in high regard in the academic community. His intervention efforts in shaping public policy and

state agenda for developmental needs have yielded substantial results. Prof. Haragopal, is currently associated with the Centre for Human Rights, University of Hyderabad and has previously worked at Kakatiya and Osmania University. He has to his credit, over 4 published books and 60 research papers. Dedicating a substantial part of his career to human rights, he was invited to attend the World Conference on Human Rights at Vienna, UN and is a former Vice President of the Andhra Pradesh Civil Liberties Committee.

p. The applicant no.16 N. Babaiah is a Human Rights activist and a Professor who has for decades strived to enable the cause of the downtrodden and has been the Chairperson of the People's Democratic Forum, Karnataka.

q. The applicant no.17, R.B. Sreekumar is an IPS officer and a recipient of the Presidential Award for meritorious service. He is a former Director General of Police (DGP), Gujarat. He has served in sensitive posts as Chief of the State and central Intelligence before he retired from his life as an honest serviceman in February 2007.

r. The applicant no.18, Kiran Nagarkar is an Indian novelist, playwright, film and drama critic and screen writer, with an emphasis on Marathi and English literature. Nagarkar is notable among Indian writers for having written acclaimed novels in more than one language. His first novel, *Saat Sakkam Trechalis* (later published in English as *Seven Sixes Are Forty Three*) is considered one of the landmark works of Marathi literature.

s. The applicant no.19, M.K. Raina is a well-known theatre director, and is the founding member of the Safdar Hashmi Memorial Trust (SAHMAT). He is a graduate of the National School of Drama, and is actively engaged in acting and directing in theatre. Raina has been a freelance theatre worker, film person and cultural

activist since 1972, experimenting in many languages, forms and techniques.

t. The applicant no.20, Sohail Hasmi is a writer, film maker and a founding member of the Safdar Hashmi Memorial Trust (SAHMAT). Sohail is a former director of 'Leap Years', a creative activity centre for children. He is an activist who has written on issues of language, culture and communalism, and has been involved in documentary film making for the last 15 years. He has conceptualised, researched, scripted and produced films on pioneers of women's education in India, and on social issues such as women and literacy.

u. The applicant no.21, Ram Rahman is a founding member of the Safdar Hashmi Memorial Trust and well known photographer. He is an Indian photographer, curator and social activist. His photographs capture the neglected sections of Indian society. His work in graphic design and architecture photography are also noteworthy. He has worked to protect the secular fabric of India

v. The applicant no.22 Sumon Mukhopadhyaya is a veteran actor, prominent Indian film maker and director from Bengal. His first cinematic directorial debut film, *Herbert,* was released in 2005 and won the National Award for Best Bengali Film.

w. The applicant no.23 Joy Sengupta is an Indian film and stage actor, and has worked both in Bollywood and in Bengali cinema. A graduate in English literature, he has been a prominent voice in theatre and films for over 25 years. He has performed widely in India and abroad, including at the West End London, Off Broadway NYC, Edinburough Fringe, and the NADA at Sydney. Joy Gupta also has wide experience in cinema, with over 30 feature

films in Hindi, English & Bengali.These films, such as *Hazar Chaurasi ki Ma,*(Hindi), *Hate Story, Anjana Anjani, Deham/Harvest (*English), *Bhopal A Prayer for Pain, Patalghar* (Bengali), *Chaturanga,* have garnered over six national & a dozen International awards and include*.* He is also a recipient of the prestigious 'V Shantaram' award for acting in Cinema.

x. The applicant no.24, John Dayal is an Indian political activist. He is a member of the National Integration Council (NIC) and former president of the All India Catholic Union. He is an eminent journalist, author, occasional documentary filmmaker, educationist and an internationally known human rights and peace activist.

y. The applicant no.25, Dolphy Anthony D'souza is a human rights activist and is former president of the Bombay Catholic Sabha. He is also convenor of the Police Reforms Movement which pushes for institutional reform in India's police force.

z. The applicant no.26, K.L. Ashok is general secretary of the Karnataka Communal Harmony Forum (KKSV). The KKSV is a vibrant people's movement in all districts of Karnatake that is committed to preserving the syncretic culture of India and the secular ideals of the Indian Constitution.

aa. The applicant no.27 K.P. Sripala is an advocate and a social activist who is committed to public causes.

bb. The applicant no.28 A.K. Subbaiah is a former Member of the Legislative Council, and author of several books and articles published in the Kannada language.

cc. The applicant no.29 Suresh Bhat Bakrabail is an eminent writer, activist and translator, and has over three dozen translated works to his credit.

dd. The applicant no.30, Tanaz Dara Mody who is is also known as Rupabehn Mody, is one of the fearless survivors and faces of the Gujarat 2002 riots.

ee. The applicant no.31, Muniza R. Khan is an academic and social activist who has studied issues related to secularism, gender and peace. She holds a PhD in sociology from the prestigious Banaras Hindu University (BHU), and is the author of “Socio-Legal Status of Muslim women” published by Radiant Publishers. Her research includes works such as ‘Communal Riots in Varanasi, 1989, (Monograph); a Project on “Education among Varanasi Muslims: A study in the perspective of national integration”, funded by ICSSR. (Project report), Communal riots study of Varanasi, 1991, and Lucknow 1996, funded by CSSS, Mumbai.

ff. The applicant no.32, Tanveer Jafri is the son of Ahsan Jafri, who was a former parliamentarian from Gujarat. An engineer by profession, he and his family are among the fearless survivors of the Gujarat riots of 2002.

4. The Applicants herein are aggrieved by the decree passed by the Special Full Bench of the Hon’ble High Court of Allahabad at Lucknow. The present Civil Appeal/s raises various issues both legal and social which would have far reaching effects on the communal fabric of the country. Thus, it is the contention of the Applicants to not look at the present Civil Appeal/s through the limited lens of a land dispute. The Applicants being public spirited people committed to the constitutional values seek to intervene in the conviction of proposing a solution to the present Civil Appeal/s which would be consistent with the secular and tolerant ethos that are paramount in ensuring lasting peace in a Country like India with diverse religious

sentiments. It is submitted that there has been a history of communal violence associated with the said premises and adjudication of the present Civil Appeal/s in favour of either parties i.e. Hindus and Muslims is bound to draw sharp reactions on both ends of the spectrum.

5. The study undertaken on the subject matter by the applicants has revealed that the first suit with respect to the disputed land came to be filed in January 1985 being Original Suit No. 61/280 of 1985, filed by Mahant Raghubar Dass. The same was dismissed and so were the two appeals filed against the dismissal. Following the said suit, five suits came to be filed, praying for, inter alia, the enforcement of the religious rights and injunctive rights for protection against demolition. All the five subsequent suits were heard together and transferred to be heard by a Bench of Three Judges of the Allahabad High Court by an order dated 10.07.1989. The judgement in the same suit is under consideration by this Hon'ble Court in the present Civil Appeal/s.

6. The submissions of the Applicant are three folds:

   a. None of the parties to the original suit have been able to prove conclusive title to the disputed premises.

   b. The Hon'ble High Court has decided that the area covered under the erstwhile central dome of the disputed structure was the birthplace of Lord Rama, despite there being no archaeological evidence and in certain instances selectively accepting and rejecting historical evidence.

c. The said premise and dispute engulfing it have over the course of last three decades resulted in various incidences of polarising communal violence across the country.

d. It is the apprehension of the Applicants that if the Hon'ble High Court adjudicates the present Civil Appeal/s in favour of either the contesting communities, it is bound to forge extreme opinion amongst the communities on both sides which may result in aggravated incidents of violence as had been perpetuated earlier by the involvement of various political parties posing a serious threat to the secular fabric of the country.

7. Thus, keeping these broad issues in mind the Applicants humbly submit that the said dispute should not be looked at through the prism of a land dispute simpliciter and bring forth the following points that the Hon'ble Court should consider and refrain from adjudicating the present Civil Appeal/s in either of the communities favour in the larger public interest of safeguarding communal harmony.

8. The applicants state and submit that it has been the categorical finding of the Special Bench of the Hon'ble High Court that none of the parties have been able to prove conclusive title of the disputed property and hence the Hon'ble High Court has proceeded to adjudicate the title on the basis of possession. In the dissenting opinion, the learned judge in the gist of findings specifically states that:

> *"10. That both the parties have failed to prove commencement of their title hence by the virtue of*

Section 110 Evidence Act both are held to be joint title holders on the basis of joint possession".

9. Further, the Hon'ble High Court after recording evidence of various individuals and referring to numerous historical documents come to the conclusion that at least since 1855, the inner courtyard of the disputed premise have been jointly being used by the Hindus and the Muslims, the outer courtyard, and the area covered by it was exclusively being used by the Hindus. Thus, drawing from the said conclusions the Hon'ble High Court arrives at the following decision:

"(i) It is declared that the area covered by the central dome of the three domed structures, i.e., the disputed structure being the deity of Bhagwan Ram Janamsthan and place of birth of Lord Rama as per faith and belief of the Hindus, belong to plaintiffs (Suit -5) and shall not be obstructed or interfered in any manner by the Defendants. This area is shown by letters AA BB CC DD is Appendix 7 to this judgement

(ii) The area within the inner courtyard denoted by letters B C D L K J H G in Appendix 7 (excluding (i) above belong to members of both the communities, i.e, Hindus (here plaintiffs, Suit- 5) and Muslims since it was being used by both since decades and centuries. It is, however made clear that for the purpose of share of plaintiff, Suit – 5 under this direction the area which is covered by (i) above shall also be included.

(iii) The area covered by the structures, namely Ram Chabutra (EE FF GG HH in Appendix 7) Sita Rasoi (MM NN OO PP in Appendix 7) and Bhandar (II JJ KK LL in Appendix 7) in the outer courtyard is declared in the share of Nirmohi Akhara

(defendant No 3) and they shall be entitled to possession thereof in the absence of any persons with better titles.

(iv) The open are within the outer courtyard (A G H J K L E F in Appendix 7) (except that covered by (iii) above) shall be shared by Nirmohi Akhara (defendant No 3) and plaintiffs (Suit -5) since it has been generally used by the Hindu people for worship at both places.

(iv-a) It is however made clear that the share of Muslim parties shall not be less than one third (1/3) of the total area of the premises and if necessary it may be given some area of the outer courtyard. It is also made clear that while making partition by metes and bounds, if some minor adjustments are to be made with respect to the shares of the different parties, the affected party may be compensated by allotting the requisite land form the area which is under acquisition of the Government of India".

10. The Applicants state and submit that the issues that have been adjudicated by the Hon'ble High Court which are central to the eventual decree of the Suit in terms of the aforesaid order can be broadly classified into the following heads:

1. Whether the disputed property is the birthplace of Lord Rama and was there a temple on the said property?
2. Whether the Hindus had been continuously worshipping at the place in dispute?
3. Whether the parties to the suit have been able to prove possession and/ or adverse possession?

4. Identity of the Property that is if the said land is Nazul land and its effect.

11. The Applicants state that with respect to the aforesaid issues i.e. whether the disputed property is the birthplace of Lord Rama and was there a temple on the said property, the Hon'ble High Court comes to the conclusion that the disputed property is the birthplace of Lord Rama and the disputed structure i.e. Babri Masjid was built on a temple.

12. The Hon'ble High Court has arrived at a conclusion that the area under the Central Dome of the disputed premise is the birth place of Lord Rama on the basis of the presumption that it is unanimously believed as a matter of faith. In para 4412 and 4413 of the impugned judgement the Court has concluded on this issue thus." *A bare reading of all the above statements makes it very clear and categorical that the belief of Hindus by tradition was that the birthplace of Lord Rama lie within the premises of the dispute and was confined to the area under the central dome of three domed structures i.e., the disputed structure in the inner courtyard. In arriving to this conclusion we do not find any difficulty since the pleadings in general and in particular also do not detract us. When the Hindu parties have referred to the entire disputed site as a place of birth, this Court can always find out and record a finding for, instead of the entire areas, a smaller area within the same premises. The pleadings are not to be read in a pedantic manner but the Court has to find out substance therein as to whether the parties knew their case or not. The evidence adduced by the parties and what the witnesses have said on behalf of Hindu parties fortify the case set up by the defendants".* The Applicant states that, quite shockingly, the

learned Judge further observes thus, "*Once we find that by way of faith and traditions, Hindus have been worshipping the place of birth of Lord Ram at the site in dispute, we have no reason but to hold in a matter relating to such a kind of historical event that for all practical purposes this is the place of birth of Lord Ram*"(para 4407).

13. The reasoning adopted by the Hon'ble High Court while arriving at the said conclusion, in the respectful submission of the applicants is contradictory and is based on an incorrect appraisal of the historical accounts and contemporary evaluation of the said historical records. The error in arriving at the said conclusions is that the Hon'ble High Court while placing reliance on the evidence of some Hindus and some Muslims reiterating that it was their belief that the area under the Central dome is the sanctum sanctorum i.e. birth place of Lord Rama has ignored or rejected historical and documentary evidence which may be able to establish to the contrary, including the record that during the period 1770-1870 A.D the tradition and belief/faith was in respect of Janamsthan temple situated in the northern side of Babri Masjid to be place of birth of Lord Ram. Like the belief of Lord Ram, having been born at the place the Mosque was not mentioned in the Gazetteer of Walter Hamilton 1815/1828 A.D. Thus, the findings of the Hon'ble High Court that the area under the central dome of the erstwhile disputed premises is based on the belief and faith of the Hindu community and discarded any sort of evidence to the contrary. This in the respectful submissions of the Applicants, erroneous and thus, the said finding cannot bestow any right on the Hindu community with respect to the area under the Central dome. In any case such crucial issues cannot be decided on the basis of belief/faith as that

would be against the rule of law which is the foundational principle of our Constitution. The Applicants refute the finding of the Hon'ble High Court that there exists a belief among majority of the Hindu community that the disputed property is the birthplace of Lord Rama, as there is no basis on which such a finding could be sustained. Moreover, the Applicants state that in light of the various other places within Ayodhya laying claim of being the birthplace of Lord Rama, it is categorically stated that majority of the Hindus do not espouse to the belief that the disputed property is the birthplace of Lord Rama.

14. The Applicants respectfully submit that there are other omissions as well relating to appraisal of historical evidence. It is submitted that the Hon'ble High Court examined documents like Muslim scriptures, Hindu scriptures, Skanda Puran, Historical accounts written by Muslim historians, the Diary of a French Jesuit Priest, Gazetteers and books written by British officials and historians, Encyclopaedia Britannica, Carved stone blocks and inscription found from the debris of the structure, Report of the Archaeological Survey of India (ASI) but has failed to arrive at a conclusion based on the same. For instance the findings of the ASI relating to the inscription relied upon by this Hon'ble Court were from the early 16th century. However the Hon'ble High Court has concluded that it was not proved that the Babri Mosque was built during Babar's reign, which runs contrary to the finding of the ASI report. Similarly, the Applicants state and submit that, while deciding whether the building had been constructed on the site of an alleged Hindu temple after demolishing the same, the Hon'ble High Court relies on the Sanskrit inscriptions as primary evidence. It must be

stated that none of these Sanskrit inscriptions relied upon or found at or relating to Ayodhya before 1528 contain any reference to Lord Rama directly by the name or to any sanctity attached to Ayodhya on account of it being its place of birth. The fact that these were found by the kar sevaks during demolition raises pertinent questions about the veracity of these inscriptions. The possibility of the same is acknowledged at para no. 4384 when this inscription proved the construction of a Vishnu – Hari temple at the site of the Babri Masjid, which he indeed should have if the kar sevaks' alleged discovery of it in the debris of the Babri Masjid was genuine. Moreover the extant inscription records the building of Vishnu Hari temple but the name 'Ram' for the deity never occurs. The claim that it represents the site of Ramjanmabhoomi had been rejected by the VHP's own witness, Dr KV Ramesh whose reading of the inscription has also been accepted.

15. The Applicants further state that, no Sanskrit or other language texts composed before the 16th century AD, not even Valmiki's Ramayana has been cited before the Hon'ble Allahabad High Court which in any passage lauded Ayodhya explicitly as the birthplace (Janmabhoomi etc) of Lord Ram, , or attributed its sanctity as a pilgrimage centre to this cause (Para no 4089 to 4091); and this is tacitly admitted by Shri MM Pandey, the VHP advocate (para no. 4092),(para no 4217 and para no 4355, concerning the Hindu belief in the location of Lord Ram's birthplace in Ayodhya). The only reference that could be presented to the High Court is from its chapter, 'Uttarakhand', where Tulsidas speaks of his visits to Awadhipuri and witnessing Janam Mahotsav, the birth celebration of Lord Rama (para no 4354.)

16. The Applicants further state that, it is clear that no evidence from the inscriptions or from the texts until the 16th century that there was any particular spot within Ayodhya for the birthplace of Lord Ram. Abul Fazl's Ain – I – Akbari, written in 1595, in passages submitted to the Hon'ble High Court, speaks of Ayodhyaya or Awadh as the residence (bungah)" – not the birthplace – of Raja Ramchandra (text, Nawal Kishore d.' Lucknow, 1892, Vol II, p 78: Jaretts translation, ed J. Sarkar, Calcutta, 1949, II, P. 182). Similarly when the 1608-11, William Finch visited Ayodhya, then quite contrary to the Hon'ble High Court's conclusions, (para no 4375), he did not at all refer to the fort of Ramchandra where he was born." Thus, it is clear that the belief that the disputed property is the birthplace of Lord Rama, only germinates in the early 18th Century and no historical record or literary record prior to late-16th century exists to justify the claim of the Hindu parties that the disputed premise was considered as the birthplace of Lord Rama since time immemorial.

17. The Applicants state that the Hon'ble High court in para no. 4374 it is stated that "*The only thing the court should not do is to base its conclusions on mere conjectures and surmises. Here we have not to consider the historicity of the Ayodhya or Lord Ram but only to find out whether the place in dispute according to the belief, faith and traditions of Hindus is the site where Lord Ram is born we need not to record a finding like mathematical calculation but it has to be decided on the preponderance of probability. As we have already said that if Lord Ram was born at Ayodhya then there must be a place which can be identified for such purpose. It is nowhere suggested by the Plaintiffs (Suit-4) for the Muslim parties that except*

the property in dispute there was any other place in Ayodhya which is believed by the Hindu people as place of birth of Lord Ram. What they submit is that there was another temple on the north site of the property in the dispute which is called Janmasthan Temple and therefore that can be the place of birth. But the antiquity of that temple goes back to only about 200-300 years i.e. not beyond the 18th or 19th century".

18. Having stated the need for caution and need to see the said issue beyond the scope of conjecture in the aforesaid paragraph, the Hon'ble High Court however comes to diametrically opposite footings in para no 4415 of the impugned judgement that, " We are also of the view that once such belief gets concentrated to a particular point, and in totality of the facts, we also find no reason otherwise, it partakes the nature of an essential part of religion particularly when it relates to a matter which is of peculiar significance to a religion. It, therefore, stands on a different footing. Such an essential part of religion is constitutionally protected under Article 25." The Applicants state that even if it assumed without admitting that the majority of the Hindus do believe the disputed property to be the birthplace of Lord Rama, but the same would not make it an essential part of their religious practice and religion and the Hon'ble High Court erred in relying solely on the basis of the oral statements of Hindus and equating it with a necessary or central part of their religion.

19. These observations of the officially appointed Liberhan Ayodhya Commission report bears out the sentiments and convictions of vast numbers of Indians, even believing Hindus. The Liberhan Ayodhya Enquiry Commission was officially appointed by

the Central Government and the conclusions and recommendations are worthy of being deliberated upon and accepted. The applicants crave leave to refer and rely upon the same at the time of hearing of the application.

20. Hinduism has arguably been known for its eclectic inclusion. Many would say, including some of the applicants that Lord Shiva who uttered “One who blesses everybody with peace” (Sham KarotiIti Shamkaram) would have been offended by the actions of December 6, 1992. It could also be said and argued, in pre-historic or historic times, the ruler did allow a set of his subjects (prajas) to freely kill another group. The word Raja, to many believers, etymologically meant to be a person who brings reconciliation and peace among the subjects – Prajanam Ranjanath Raja (Brahmanda Purana). Kamandakiya Nitisara, a well accepted authority on Hindu polity, in Chapter 5 Shlokas 82-83, cautions the administrators/ Rajas to protect the citizens from the favourites of the King and his own greed. “The subjects require protection against wicked officers of the King, thieves, enemies of the King, royal favourites (such as the Queens, Princes etc) and more than all, against the greed of the King himself. The king should secure the people against these fears.” Further, the Shanti Parva of Mahabharata (59-106/107) exhorts the ruler “You should take a pledge that by thought, word and deed, you will rule the world believing that creation is the very incarnation of the Creator.” The Applicant no. 12 is an eye-witness to this build-up. The award winning film *Ram Ke Naam,* records the meeting of Applicant 12, on October 30, 1990 with Pujari Laldas, the court-appointed head priest of the disputed Ram Janmabhoomi/Babri Mosque site. Laldas was a strong proponent of

tolerance and dialogue, a Hindu priest who had received death threats. The Uttar Pradesh government had provided him with two bodyguards. He spoke of the syncretic past of Ayodhya and expressed anguish that Hindu-Muslim unity in the country was being sacrificed by people who were cynically using religion. He predicted a storm of mayhem that would follow but expressed confidence that this storm too would pass and sanity would return. Pujari Laldas's predictions of large-scale violence in the region came true. A year later, a tiny item on the inside pages of *The Times of India* noted, "Controversial priest found murdered." Pujari Laldas had been killed with a country-made revolver. The newspaper article never told us that the real "controversy" was the fact that this brave priest believed in a Hinduism that is the mirror opposite of divisive intolerance. His killers have remained unidentified and unpunished. Only small fish behind the murder were nabbed and the conspiracy behind the killing never properly investigated or unearthed.

21. The applicants submit that at stake is the heart and soul of India, its abiding faith in multiple ways of being and divinity that morphed into the commitment to modern day pluralism, diversity, equity, all contained in the Indian Constitution. It has been specifically found by the Liberhan Commission that **(Paras 158.2 and 158.3 Chapter I0, The Joint Common Enterprise, Report of the Liberhan Ayodhya Commission of Inquiry, Pages 915- 918):**

> **"158.2....** [T]he Ayodhya campaign did not enjoy the willing and voluntary support of the common person, even of the average Hindu. The campaign did however succeed in silencing him and ensuring that he risked being labelled an atheist or an anti-Hindu, or

unpatriotic, in case he tried to evaluate the situation logically or to counter the vituperative tirades of the champions of the campaign. ...

158.4 The rallies and *yatras* were aimed at the emotionally charged common man and to make him a part of the demand for the temple at Ayodhya. These measures did not succeed until the BJP joined in. ...

158.6 As is evident from the evidence, in order to support the prerequisites for such a movement, the finances required were channelled from the coffers of the various sangh parivar organisations through various banks to accounts held in the names of various organisations and individuals to carry out the innumerable acts needed for the movement.

158.7 Apart from the inflow of the cash from unidentifiable sources, cash was also transferred and transacted through banks to the recipient organisations. The RSS,VHP, BJP and also the other members of the sangh parivar raised funds for conducting the movement from time to time. The recipient organisations were mostly the Ram Janmabhoomi Nyas, Bharat Kalyan Pratishthan, Vishwa Hindu Parishad, Ram Janmabhoomi Nyas Paduka Pujan Nidhi, Shri Ram Janmabhoomi Nyas Shri RamShila Pujan, Jan Hiteshi, and the accounts were operated by Omkar Bhave, Mahant Paramhans Ramchandra Das, Nritya Gopal Das, Gurjan Singh and Narad Saran, Acharya Giriraj Kishore, Vishnu Hari Dalmia, Nana Bhagwat, Jaswant Rai Gupta,BP

Toshniwal, Sitaram Agarwal, Ashok Singhal, Rameshwar Dyal, Prem Nath, Champat Rai, Surya Krishan, Yashwant Bhatt, Avdesh Kumar Das Shastri, etc.

158.8 In short, suffice it to say that the amounts transacted exceeded many tens of crores of rupees which were utilised for effecting the events of December 6th, 1992.

158.10 The theory or the claim made by the leaders of the movement or the icons from political or social organisations does not carry conviction to conclude that the demolition was carried out by the *kar sevaks* spontaneously out of sheer anger or emotions. The mode of assault, the small number of *kar sevaks* who carried out the demolition and the constraints of the space to accommodate the number of people, veiling of the identity of the *kar sevaks* entering the domes, the removal of the idols and the cash box from under the dome and the subsequentreinstallation in the make shift temple, construction of the make shift temple, availability of instruments and material for demolition and for the swift constructionof the make shift temple, categorically leads to the conclusionand finding that the demolition was carried out with great painstaking preparationand preplanning. The involvement of quite a number of *kar sevaks* for carrying out the demolition ordinarily could not have been kept secret from people like the chief minister who admittedly has a number of sources of

information; orfrom KS Sudarshan who was heading the RSS while their *swayamsevaks* were detailed on the spot for each and every act required to be carried out; or local leaders like Vinay Katiyar or Ashok Singhal or the persons present at the spotprior to December 6th, 1992. ...

Chapter “Circumstances’:

Para 87.25 : The whole mosque movement was a political device employed mainly for acquiring political power….

Para 87.26 :…The rapid advancements in the means of communication played a prominent role in in helping the spread of the temple movement within the Hindus and provided an opportunity to the other camp to similarly rouse the emotions of Muslims.

Para 87.27: The communal situation deteriorated greatly and tensions between the two communities escalated to dangerous levels. The cleavage between them may not be obliterated completely, but it is always capable of being diluted. The vested political interests did not however allow it to be minimized. They aggravated the situation and worsened the relations between communities as and when they required, or as and when the situation demanded it.”

22. The Applicants note that in the dissenting judgement, it is recorded that “No temple was demolished for constructing the mosque. Mosque was constructed over the ruins of temple which were lying in utter ruins since a very long time before the construction of the Mosque and some material thereof was used in

construction of the mosque”. There is no proof about the existence of a temple, let alone a Ram Mandir, which was allegedly “demolished” to construct a Masjid.

23. The Applicants further submit that, the ASI report does not reflect on the construction of the mosque, in fact, with regard to the mosque, the report provides extensive details related with the pillars and pillar bases that were found either embedded or lying on the floors of the mosque. Although the reports nowhere hints at any activity of destruction, it appears to suggest that the pillars were foreign to the structure of the mosque.

24. The Applicants submit that the reasoning used by the Hon’ble High Court is that since the Muslim parties could not show that other than the property in dispute there was any other place in Ayodhya which is believed by the Hindu people as place of birth of Lord Ram, the preponderance of probability is towards existence of a Ram temple at the disputed property. It is submitted that, faith and religious propaganda cannot be the deciding elements for establishing a “historical event” and its locale (birthplace of Lord Ram). If that were to be considered as evidence enough to establish title in suits, then the Hon’ble High Court need not even have gone through the rather lengthy and futile exercise of examination of the historical evidence.

25. The Applicants submit that this Hon’ble court in Karnataka Board of Wakf v Government of India (2004) 10 SCC 779 held, “As far as title suit of civil nature is concerned, there is no room for historical facts and claims. Reliance on borderline historical facts will lead to erroneous conclusion”. In the light of the above, it is evident that there cannot and should not be any decision on title of the suit

based on so many contentious historical evidence, let alone the fact of it being based on faith and religious propaganda.

26. The Applicants state and submit that central to the litigation are the idols of Rama said to have been installed there in 1949; that is, very shortly after the horrors of Partition. For 43 years, both communities used the site side by side till, for reasons that were clearly political and had nothing to do with faith or even the shared use of the site, a political party staged a frontal attack on the Constitutional imperative of secularism, which has also been held to be a part of the basic structure of the Constitution in various judgements of this Hon'ble Court.

27. The Hon'ble High Court with respect to whether the disputed structure i.e. Babri Masjid was built on a temple arrives at the following conclusions after the appraising a vast range of historical documents and records :

> " *4055. The ultimate inference, which can reasonably be drawn by this Court from the entire discussion and material noticed above is:*
>
> *(i)The disputed structure was not raised on a virgin, vacant, unoccupied open land.*
>
> *(ii)There existed a structure, if not much bigger then at least comparable or bigger than the disputed structure, at the site in dispute.*
>
> *(iii) the builder of the disputed structure knew the details of the erstwhile structure, its strength, capacity the size of the walls etc and therefore did not hesitate in using the walls etc. without any further improvement*

(iv) the erstwhile structure was religious in nature and that too non Islamic one.

(v) the material like stone, pillars, bricks etc of the erstwhile structure was used in raising the disputed structure.

(iv) The artefacts recovered during excavation are mostly such are non Islamic i.e. pertaining to Hindu religious places. Even if we accept that some of the items are such which may be used in other religions also. Simultaneously no artefacts etc., which can be used only in Islamic religious place, has been found.

28. The Applicants state that surprisingly the Hon'ble High Court further holds that it is also the de facto position that despite construction of such building in the shape of the mosque, it was used and continued to be visited by Hindus for offering worship, Puja and Darshan since according to their belief they treated it to be the birth place of Lord Rama (para no. 4058). Despite, there being no documentary evidence or records produced to sustain such a claim, the Hon'ble High Court lays heavy reliance on the oral evidence of witnesses belonging to the Hindu community.

29. The applicants state that with respect to the question of possession and adverse possession the conclusion arrived at by the Hon'ble High Court is that the Hindus and the Muslims were jointly in possession of the area falling within the inner courtyard including the domed structure, while the outer courtyard was exclusively possessed and used by the Hindu community (Nirmohi Akhara). While discussing the factual matrix leading to such a finding, the

Hon’ble High Court in para no.2620 records “Moreover as a matter of fact, the place in dispute continued to be visited by the Hindus for the purpose of worship, Darshan, etc. The religious status of the plaintiff-deities remained intact. We do find mention of the factum that despite construction of the building as mosque the Hindus visited there and offered worship continuously, but we find no mention, whatsoever, that the Muslims also simultaneously offered Namaz at the disputed site from the date it was constructed and thereafter till 1856-57. At least till 1860 we find no material at all supporting the claim of the Muslim parties in this regard. On the contrary, so far as the worship of Hindus in the disputed structure is concerned, there are at least two documents wherein this fact has been noticed and acknowledged. There is nothing contradictory thereto.”

30. Further, the Hon’ble High Court bifurcates the issue of adverse possession the period of dispute since 1528 AD into four parts, (1) prior to 1528 AD; (2) prior to 1855 AD; (3) from 1855 AD to 1934 AD; and (5) from 1934 AD to 22/23 December 1949. Hindu parties have claimed their continuous possession on the property in dispute since time immemorial and in any case since 1934 AD. They say that no prayer (Namaz) has been offered in the disputed building earlier and in any case since 1934 AD and, therefore, possession of Hindus on the disputed site cannot be disturbed after expiry of the period of limitation within which they could have been dispossessed by the Muslim parties. Further, there were pleadings to the effect that the place in dispute itself is a deity being birthplace of Lord Rama, has continuously been visited by Hindus for worship. On the other hand, the Muslim parties have claimed that they have been in

continuous possession of the disputed land since 1528, when Mir Baqi built the Babri Masjid at the disputed location and they offered continuous Namaz at the said mosque till 16.12.1949.

31. The plea for adverse possession has been raised by both Hindu and Muslim parties and while deciding the same, the Hon'ble High Court falls back on their findings that the Muslim community was unable to prove that the mosque was built in 1528, so the question of having possession since 1528 would not even arise, moreover the Hon'ble High Court observes that there is no cogent evidence on record to prove that Muslim parties were in possession prior to 1985 (para no. 2989) , the finding of the Hon'ble High Court that it could not be proved that the mosque was not constructed in and around 1528 itself is in the respectful submission of the applicants, incorrect.

32. It is submitted by the Applicants that the High Court does not seem to have taken into consideration the fact that there was considerable change in the styles of architecture, including mosque architecture, between the times of Babar and Aurangzeb; and it can easily be established, by the style and technique employed in a building, whether it was built in the pre-Mughal or early Mughal times or later. The Babri Masjid is recognisably built in the Sharqi style of architecture (seen noticeably at Jaunpur) with the characteristic form given to the propylon. The domes, though large, are flattish and heavy. This style became obsolete soon after; and well before Aurangzeb's time, light (even bulbous) domes with free-standing minarets became the hallmark of a mosque. It is impossible to conceive that a mosque built in Aurangzeb's time or later would have had the design or exhibit the building technique of the Babri Masjid.

It is just submitted that this factual matrix is completely ignored by the Hon'ble High Court.

33. It is submitted that the dissenting judgement has rightly pointed out that the conclusion of ASI Report, 2003, that there is 'evidence of continuity in structural phases from the tenth century onwards up to the construction of the disputed structure is directly in conflict with the pleadings, gazetteers and history books. It further rightly points out, that in case some temple had been demolished for construction of the mosque, then the superstructure material of the temple would not have gone inside the ground. It should have been either reused or removed. On the contrary, the bizarre use of faith and belief as legal categories and the consequences thereof may actually add to the muddle.

34. Further, the Applicants state that the Hon'ble High Court has erred in ignoring evidence of the possession of Muslims of the property in suit for the period prior to 1855 and it was also wrongly held that the Muslims did not have the possession of the premises in outer courtyard since 1856-1857 when the dividing wall was said to have been raised. The Hon'ble High Court also failed to appreciate the large number of documents and references of Historical Books as well as of the books relied upon by the Hindu side which established that the Muslims were not only in full control of the inner portion of the Mosque but they had the possession and control of the outer courtyard also excluding the portion on which chabutra of 17 X 21 ft. was made around 1857 A.D.

35. The Applicants state that the Hon'ble High Court records that the Nazul plot, in which the building in dispute existed was recorded as Nazul plot no 583, Khasra of 1931 of Mohalla Kot Ram Chandra

known as Ramkot, City Ayodhya (Nazul Estate Ayodhya) the said disputed property was recorded Nazul in the First Settlement 1861 and had continued so even when the suit in question was filed (para no 4428). However, in view of the fact that the State of Uttar Pradesh has given up its claim and is not contesting the matter though it is a party in the suit and thus the fact that the plot is Nazul Land will not make any impact upon the claim of the various parties of the two communities (para no. 4455)

36. Nazul lands are owned by the State and governed by the Government Grants Act, 1895 and the Nazul Rules. The Applicants state that despite the fact that the disputed property was recorded as Nazul at least since 1861, the state of Uttar Pradesh could have legitimately staked claim over the said property and could have spared both the communities the hardship and bloodshed that has germinated from the said dispute. Further, the state of Uttar Pradesh is the only entity which has clear title over the property and the perplexing stance adopted by the State of Uttar Pradesh to not contest the suit has resulted in the adjudication of the said dispute on the basis of possession/adverse possession leading to the fractured adjudication which invariably leaves the scope open for communal tensions to flare up again. The Applicants believe that the said stance of the State of Uttar Pradesh has jeopardized the social fabric of a volatile area. Moreover, the State of Uttar Pradesh which is one of the most impoverished and socially backward state in the Union cannot afford to dispense State largesse without any viable reasons. While all the parties to the dispute have contested the suits tooth and nail, the State of Uttar Pradesh who prima facie had the strongest case for clear title as per the findings of the Hon’ble High

Court surrenders its rights and decides not to contest the suit at all, which the Applicants submit is very perplexing and the such dispensation of state largesse should not be permitted.

37. The Applicants state and submit that neither the Hindu community nor the Muslim Community have established title over the disputed property and both the communities have made specific averments seeking title through adverse possession. While dealing with the question of adverse possession the Hon'ble High Court is not able to conclusively decide in either of the communities favour and both the parties partly succeed in establishing their possession and use of the inner courtyard. The Muslim community has averred that the Babri Masjid was built in 1528 and since then on it is claimed that the Muslim community has enjoyed undisturbed possession of the disputed property. On the other hand the Hindu community claims possession of the said premises since time immemorial, but none of the parties before the Hon'ble High Court conclusively established the case that they had set out in their respective pleadings. Furthermore, the conclusion arrived at by the Hon'ble High Court is that the Hindus and the Muslims jointly were in possession of the area falling within the inner courtyard including the domed structure. While the outer courtyard was exclusively possessed and used by the Hindu Community and thus all the 3 parties (Muslims, Hindus and Nirmohi Akhara) are entitled to a declaration of joint title and possession to the extent of 1/3rd share each. It is the humble submission of the Applicants that in the event that the High Court has reached an inconclusive decision vis-a vis both title and possession of the disputed property, handing over the said property to either of the contesting parties in the Present Civil

Appeal/s would only help ferment disillusionment amongst the two communities, peaceful co habitation of which communities is paramount to the integration of the country.

38. The judgement gives an impression that it is more of a political solution adopted by a court, not a decision based, as it should have been, strictly on facts and law. The applicants are concluding thus in view of the way in which the claim of the wakf board is treated. The suit of the Wakf Boards was rejected. However, the Board was granted a one-third right over the site. If the suit was being dismissed, no legal right could have followed. In the submission of the applicants, granting these reliefs after rejecting the suit demonstrates a solution outside the parametres of the law.

39. The applicants submit that successive governments have abandoned their two obligations to uphold the rule of law, and to broker a solution, and blithely made it the responsibility of the judiciary. The implications of the High Court's attempt at placating all parties is unsettling for other reasons as well. It can be interpreted to mean that it is perfectly all right to demolish an old structure and to lay claim on the basis of some real or imaginary right, and to do so even by taking the law into your own hands.

40. The Applicants state and submit that, the disputed land in question, initially was only a religious issue confined to the local limits of Ayodhya. It was only after the 1980's, with the involvement of political parties that the issue of the disputed land was made into a political issue beyond the local limits of Ayodhya.

41. The Applicants state and submit that, as per the Report of the Liberhan Ayodhya Commission, in the year 1528, the Mughal

Emperor Babri, ordered his commander Mir Baqi to erect a mosque at Ayodhya. The British Rulers then divided the area in two parts one comprising of the "Babri Masjid' and the other 'Sita ki Rasoi' and 'Ram Chabutra' where the Hindus used to perform Pujas. Thus both the communities were using the said suit property to perform their religious practices. However, over time, through a series of events, the dispute over the said property intensified. While the suits were being decided, the country saw an increase in communal riots and an ever escalating divide between Hindus and Muslims.

42. The Applicants state that hostility between the Hindus and the Muslims was perpetrated by powers that be and elites of both sections and this only intensified after 1947 when Pakistan was carved out of India. As per the Report of the Liberhan Ayodhya Commision Report, there were some minor complaints by travellers visiting the Babri Mosque, because of which a police post was established on 10.12.1949, as a threat was perceived to the said disputed property. On 22/23.12.1949, a mob of 50 to 60 persons had entered the mosque by breaking the walls and placing the idols of Shri Ram Lalla in the Garb Graha. An FIR towards the same was lodged immediately. In the Report of the Liberhan Ayodhya Commission, it has been recorded that the District Magistrate then, had observed that, placing of the idols in the mosque was in fact an illegal act and that, the said action of placing of the idols was in fact going to lead to a tense situation and future riots. The District Magistrate was also of the opinion that, the only solution for the said situation would be a settlement of the two communities out of court. Amongst other apprehensions that were pointed out in his reply, he had also stated that thousands of licensed armed owners were

ready to kill and support the police, if the idols were tried to be removed. Thus the hostility over the said property thus began in 1949 itself, which, eventually, due to the failure of action on the part of the various machineries, led to the demolition of the Babri Masjid.

43. The Applicants state and submit that the said land dispute was given a poltical colour only after the mid 1980's when the Vishwa Hindu Parishad and sister organizations of the Sangh Parivar were searching for a way to capture the imagination of the Hindus of India who at 83% constitute the real vote back of the country. **(From Chapter 3, *Sequence of Events. The Emergence of the Sangh Parivar,* Paras 22.1 to 24.4, Pages 78-84, of the Liberhan Ayodhya Commision of Inquiry).** The applicants have shockingly found out that a Dharam Sansad (Parliaiment of Priests) in 1984 identified 3,000 sites of potential conflict between Hindus and Muslims that could mobilize the sentiments of Hindus and polarize the nation. The top three sites chosen were at Ayodhya, Kashi and Mathura. The Dharam Sansad decided to start with the Ram temple/ Babri Mosque in Ayodhya. The Bharatiya Janta Party, even passed a resolution to that effect at Palampur, in 1989, to support the construction of temple at Ayodhya and the various other programs associated with it **(From Para 24.4 (Chapter 3) and Paras 27.5 to 27.19, Chapter 4, Pages 95-102, The Sequence of Events, Reports of the Liberhan Ayodhya Commission of Inquiry).** The Applicants state and submit that, after 1980's the VHP along with other Sadhus and Sants had started a movement to open the locks of the said property. A decision was also taken by VHP to raise a cadre of 50,00,000 Rambhakts and sacrificial groups and started that, if the locks are not opened by 8th of March 1986, the Sants

would forcibly open the locks themselves. The movement to open lock was formally started when an application for the same was made on 21.01.1986 by one Mr Umesh Chnandra Pandey. An application was further made for advancing the date of hearing. The said Application was rejected. On 01.02.1986 an Appeal was preferred from the said order declining the advancement of the date of hearing. The same was heard by District Judge, Faizabad and the District Judge allowed the said Appeal and the locks put on the property were opened. This order undid a 36 year old arrangement of keeping devotees away from the idols installed in the mosque. Further the District Magistrate was directed to ensure the safety of people and the law and order situation arising therefrom. As per the said Report, shockingly the District Magistrate had told the District Judge that the opening of the lock would not pose any law and order situation. The then Chief Minister Kalyan Singh had in fact admitted that there was a tense situation in persistence and that riots were taking place in Ajmer and Muzaffarnagar , attributable to the proposed long march by Parmahans Ramchander Dass.

44. The local administration betrayed advance knowledge of the judicial order as the Babri Masjid was unlocked and thrown open to Hindus within an hour of its pronouncement. In another tell-tale sign, Doordarshan was at hand to show the nation the precise moment when devotees rushed into the newly opened shrine.

45. The Applicants state and submit that, after 1986, further tension had started building as the VHP had decided to carry Ram Shilas (consecrated bricks) from all over the country to Ayodhya to lay the foundation of the Temple. Soon, a nationwide village to village campaign to collect bricks and money to build a grand Ram

temple in place of the Babri mosque began. The campaign went international and NRI'S chipped in from distant lands. These were the ingredients already at play when a senior BJP leader LK Advani set out his yatra that turned out to be, literally and figuratively a chariot of fire.

46. In this tense background, which eventually led to the unlawful demolition of the Babri Masjid, an Application was moved before the Allahabad High Court seeking and injunction against the Shailyans. However the Allahabad High Court failed to notice the gravity of the situation and declined the said prayer vide its order dated 14.08.1989. **(From Para 27.16 at 27.5 to 27.19, Chapter 4, Pages 95-102, The Sequence of Events, Reports of the Liberhan Ayodhya Commission of Inquiry)**

47. As per the report of the Liberhan Commission, a Writ Petition was also filed before this Hon'ble Court by Mr V.M Tarkunde, seeking a similar relief of an injunction against the Shilayans, the same was rejected vide an order dated 27.10.1989. **(From Para 27.25 Chapter 4, The Sequence of Event of the Liberhan Ayodhya Commision on Inquiry)** The Court also earlier had passed an order dated 20.03.1989 declining the grant of an injunction against the demolition of the Babri Masjid, on the grounds that there existed no evidence to hold that the Babri Masjid is intended to be demolished. A written accord was also reached between the VHP. Ashok Singhal and Buta Singh who was acting on behalf of the Government on 27.09.1989 that the VHP will maintain peace, not raise any provocative speeches and respect communal harmony and order of the Hon'ble High Court. However, these Shilayans were nothing but a part of or leading towards a larger

conspiracy that was being planned. . **(From Paras 27.29 -27.32 Chapter 4, Page 105, The Sequence of Event of the Liberhan Ayodhya Commision on Inquiry)**

48. The Applicants state and submit that, due to the rising tensions, the District Magistrate, vide its order dated 11.09.1989, had imposed an injunction on the Karsevaks. There were communal riots occurring due to the program of the Construction of the Sangh Dwar. **(From Paras 28.4, Chapter 4, Page 110, The Sequence of Event of the Liberhan Ayodhya Commision on Inquiry)** A year following that on 25.09.1990, L.K Advani declared the commencement of his Rath yatra from Somnath to Ayodhya. Records reveal that, L.K Advani on 14.09.1990 had warned the Central Government that, the support of BJP to the Government will be withdrawn if the Government tries to stop the Rath Yatra. Throughout the Rath Yatra, provocative speeches were made and warning were given by leaders like Pramod Mahajan, Bal Thackeray, Chander Dixit, Ashok Singhal etc against creating any hurdles in the Rath Yatra. It is pertinent to note that, in the Report of the Liberhan Ayodhya Commission, it has been recorded that these leaders resorted to doublespeak and carefully coloured and articulated words in a manner that they carried different meanings for different audiences. There were series of incidences of violence that were followed by the Rath Yatra. **(From Chapter 4, The Sequence of Events, pages 58- 284 Report of the Liberhan Ayodhya Enquiry Commission.)**

49. The Applicants state and submit that, the aftermath of the illegal demolition are well described in the articles featured in the "The Frontline" on January 1, 1993 in its story headlined 'Wounds all

over — The violent aftermath' said: "It may well go down in history as the worst round of widespread violence the country has seen since Partition: over a thousand people were killed in the week following the Black Sunday. The states of Maharashtra and Gujarat were burning and bleeding with more than 200 of their people consumed by the communal fury in less than a week. Anarchy reigned in Bombay and Surat where the tolls were as high as 191 and 155 respectively five days after the vandalism in Ayodhya. Madhya Pradesh, Rajasthan, Assam and Karnataka were also reeling under the impact of riots. Surprisingly, while West Bengal remained by and large peaceful initially, a belated bout of violence broke out in Calcutta and adjoining districts."

50. The Applicants state and submit that, despite the fact that- the said dispute was pending before the Hon'ble High Court, the High Court had issued orders that status quo should be maintained and undertakings were given before this Hon'ble Court, the above mentioned events were planned and executed in such a manner that no one could retain and control the peace and harmony, neither in Ayodhya, nor in the country. The events in Ayodhya had led to occurrence of riots and violence against Muslims in the entire country, especially in various parts of the country within Uttar Pradesh, Rajasthan and as far as Maharashtra Gujarat and Karnataka. It is the apprehension of the applicants that same will be replicated if this Hon'ble Court hears the above mentioned Appeals as a mere dispute over property, without considering the above mentioned facts.

51. The urbs prima of India, Bombay then, from which many of the Applicants hail, was held victim for several months to this

perpetrated and targeted violence followed by the serial blasts in March 1993. Justice BN Srikrishna inquired into and brought out an illuminative report. Justice BN Srikrishna who (as sitting judge of the Bombay High Court) sat over a Commission of Inquiry and recorded the following which best describes the situation of 1992 and its after math- " For five days in December 1992 (6th to 10th December 1992) and fifteen days in January 1993 (6th to 20th January 1993), Bombay, urbs prima of this country, was rocked by riots and violence unprecedented in magnitude and ferocity, as though the forces of Satan were let loose, destroying all human values and civilized behaviour. Neighbour killed neighbour; houses were ransacked, looted and burned, all in the name of religion, as if to vindicate painfully the cynical observation of Karl Marx, "Religion ... is the opium of the people".

52. It is further stated by the Applicants that, though the exact series of events that had occurred while the present dispute was being heard by the High Court might not occur again, it cannot be denied that the said dispute is not just a dispute between the Plaintiffs and the Defendants. The Plaintiffs and the Defendants represent a larger demographic of entire communities for whom the said dispute has become contentious and sensitive. It cannot be denied that, with the unrest in the atmosphere as is present today, there is still an evident possibility that adjudication upon the present dispute is likely to cause unrest and disturbances of violence in the country. There is also a possibility that there still exist elements who are likely to exploit the controversy of the present dispute for their own advantage at the cost of lives of innocent. Thus, it makes it even more significant, that this Hon’ble Court may take into

consideration that, the issue in the present appeals is not just a dispute over property between the Plaintiffs and the Defendants but has several other issues which will have far reaching effects on the secular fabric of the country.

53. The Applicants state and submit that, On April 19, 2017, when the Supreme Court of India, revived charges of conspiracy against eight persons responsible, in part at least, for ensuring the criminal act of destroying a place of worship, be tried in a court of law and that the trial be completed within two years, the judicial order, in more ways than one, restored faith in the very foundation of the rule of law itself.

54. The rational for a group of public intellectuals, activists and citizens intervening is simply an attempt to ensure that fissures caused by the cataclysmic event do not shake the foundations of India. India was then at year 45, been born out of along and emancipatory struggle against British colonial rule in August of 1947. The event was the calculated destruction, in full public view, as the forces of law and order mutely watched, a 400 year old Mosque, the Babri Masjid, on December 6, 1992. The ultimate target is and always been the secular foundational ideas of the Indian republic and its Constitution. It is to reiterate the fundamentals of the Indian Constitution, committed to the rule of law and equality for all that the applicants have collectively intervened.

55. The Applicants submit that unfortunately secularism is being manipulated by all groups political or otherwise. Muslims claim special privileges in the name of secularism, Hindus demand a reversion to a time that exists only in the political imagination. The issues before the High Court involved a civil suit and, in our humble

view, could not have decided the larger issues of constitutionality. In view of the fact that neither party was able to establish their case, no one should have succeeded, even partially. It appears that finding no way to balance these two, the High Court's decision attempts a secular solution that unfortunately does not put the festering wounds caused by this conflict to rest.

56. It is therefore most respectfully prayed that this Hon'ble Court upholds the high ideals of secularism and the rule of law. Today it is a battle of unequals within the courts as a divisive and cataclysmic movement and event is given legitimacy by the powers that be, and all of India, young and voiceless millions want to see the end to this deliberately perpetrated conflict. The only situation lies today In each of us Indians rising above narrow confines of class, caste, community and gender and dedicate the spot that has come to signify conflict to a constructive non religious purpose.

57. For over three decades, this peace loving people of India, practicing co existence and negotiation between different faiths and languages, who have been held hostage to this dispute, have been, unfortunately, not heard. Their vast voice has simply not been heard. This small group of representatives Indians represents that vast, silent voice, that wishes above all peace harmony and collective advancement of all Indians.

58. That the applicants also submit that by virtue of the nature of the dispute this Hon'ble Court may also consider the necessity to constitute a larger bench of at least 7 judges as certain Constitutional questions are bound to arise and there may be a need to re-consider the judgement of this Hon'ble Court in Ismail Faruqui v. Union of India (1994) 6 SCC 360.

59. That the application is bonafide and made in the interests of justice.

PRAYER

In view of facts and circumstances, stated hereinabove, it is, most respectfully prayed that this Hon'ble Court may graciously be pleased to:-

a. allow the applicants to intervene in the present Civil Appeal and make their submissions before this Hon'ble Court on the issues raised in the appeal in the lines of contentions raised in the application;

b. Direct that the disputed site be used for a non-religious public use, irrespective of the adjudication of the suit;

c. Pass any such of further order(s) that this Hon'ble Court deems fit in the facts and circumstances of the present case;

FILED BY:

MS. APARNA BHAT

ADVOCATE FOR THE APPLICANTS

FILED ON: 01.12.2017

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